TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 610.

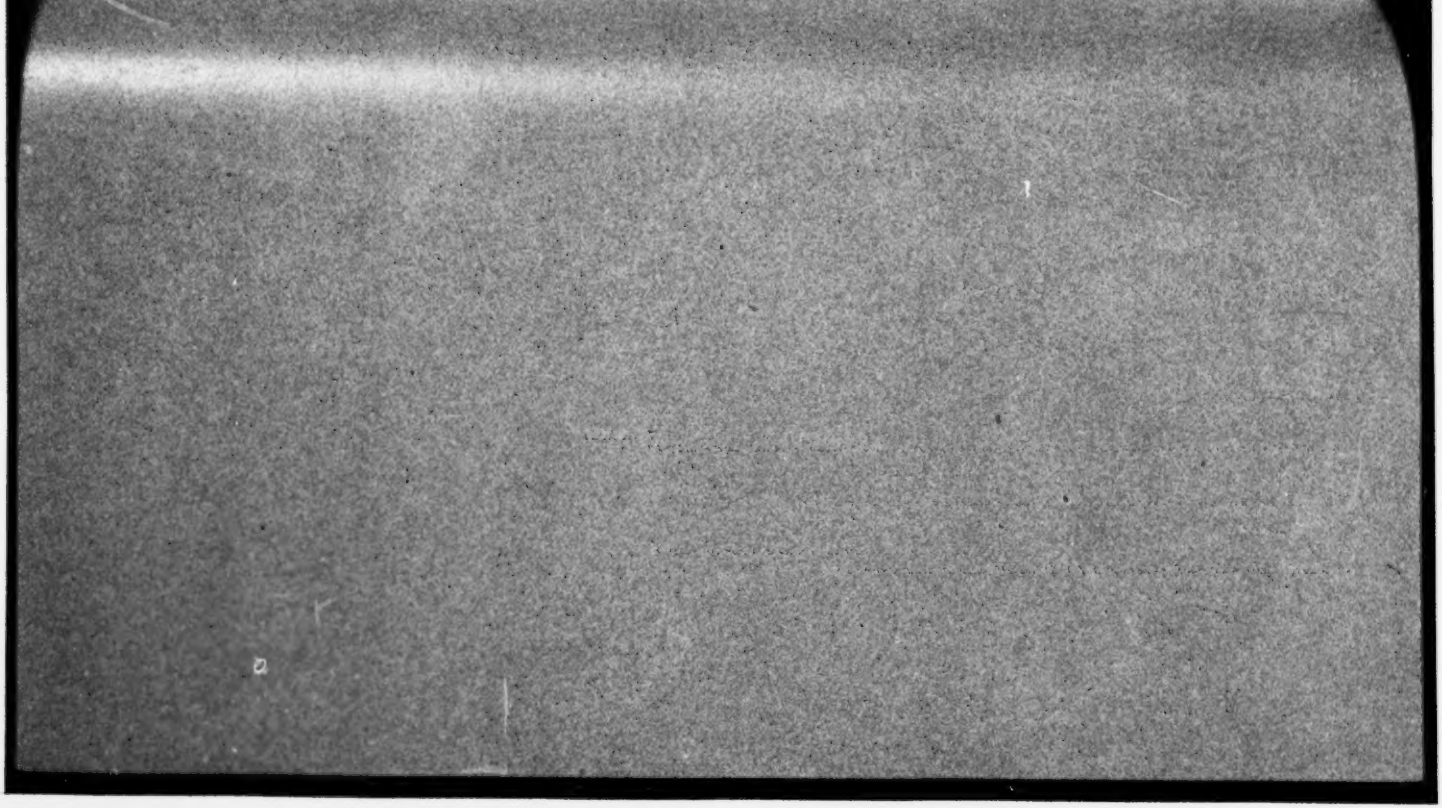
R. W. McCLAUGHRY, AS WARDEN OF THE UNITED STATES PENITENTIARY AT FORT LEAVENWORTH, KANSAS, APPELLANT,

vs.

PETER C. DEMING.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED MARCH 26, 1902.
(19,262.)



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1 In the circuit court of the United States for the district of Kansas, first division.

PETER C. DEMING, ON THE PETITION OF John H. Atwood, petitioner,
vs.
ROBERT W. MCCLAUGHRY, RESPONDENT.
} Petition in habeas corpus.

To the circuit court of the United States for the district of Kansas:

Your petitioner respectfully shows to your honorable court that prior to June 12, 1901, Peter C. Deming was a captain in the Subsistence Department of the Volunteer Army of the United States, and that he is now imprisoned and restrained of his liberty by one Robert W. McClaughry, the warden of the United States prison at Fort Leavenworth, Kansas, and that the place of said confinement is at said Fort Leavenworth, Kansas. Your petitioner shows that he, Deming, is imprisoned and restrained by virtue of a sentence imposed upon him by a general court-martial of the United States, convened by William R. Shafter, Maj. General U. S. Vols., and Brig. Gen. U. S. A., retired, being of the age of 64 years, at the Presidio of San Francisco, Calif., which said sentence is as follows:

"And the court does therefore sentence him, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, 'to be dismissed the service of the United States, to be confined in such penitentiary as the reviewing authority may direct for the period of three (3) years, and that the crime, punishment, name, and place of abode of the accused shall be published in the newspapers in and about the city of San Francisco, California, and in the State where the accused usually resides.'"

(G. O. No. 80, H. Q. A. A. G. O., 6–8–00.)

That said sentence was approved by the Secretary of War and confirmed by the President of the United States on the 8th day of June, 1900.

That the warrant or mittimus under which the said McClaughry detains said petitioner, Deming, as aforesaid, is the following order from the headquarters of the Army, that is to say:

"By the direction of the Secretary of War, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, ceases to be an officer of the Army from June 12, 1900, and the United States penitentiary at Fort Leavenworth, Kansas, is designated as the place for his confinement, where he will be sent by the commanding general, Department of California, under proper guard.

"By command of Lieutenant-General Miles.

"H. C. CORBIN,
"*Adjutant-General.*"

2 That the court-martial which imposed the said sentence was convened by virtue of the following order:

"Special Orders, No. 65. } "HEADQUARTERS DEPARTMENT OF CALIFORNIA,
"*San Francisco, Cal., March 29, 1900.*

"7. A general court-martial is appointed to meet at the Presidio of San Francisco, California, at 11 o'clock a. m., on Tuesday, the 3rd

proximo, or as soon thereafter as practicable, for the trial of Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers.

"Detail for the court:

"Colonel Jacob B. Rawles, 3rd Artillery.
"Lieutenant-Colonel Richard I. Eskridge, 23rd Infantry.
"Major Louis H. Rucker, 6th Cavalry.
"Major Benjamin C. Lockwood, 21st Infantry.
"Captain Frank West, 6th Cavalry.
"Captain Carber Howland, 4th Infantry.
"Captain Sedgwick Pratt, 3rd Artillery.
"Captain Henry C. Danes, 3rd Artillery.
"Captain Charles A. Bennett, 3rd Artillery.
"Major Stephen W. Groesbeck, judge advocate, U. S. Army, judge advocate.

[SEAL.]

"The court is empowered to proceed with the business before it with any number of members present not less than the minimum prescribed by law, the above being the greatest number that can be convened without manifest injury to the service.

"Such journeys as Colonel Rawles, Major Groesbeck, and Captain Pratt may be required to make between their respective stations and the Presidio of San Francisco, in attending the meetings of the court, are necessary for the public service.

"By command of Major-General Shafter:

"J. B. BABCOCK,
"*Assistant Adjutant-General.*"

Your petitioner avers that said Deming was an officer of the Volunteer Army and forces of the United States, and that said court-martial so above set forth and which tried said Deming were all officers in the Regular Army of the United States, and he could not legally or lawfully be tried by a court-martial composed of officers of the Regular Army of the United States, for it would be in direct violation of the 77th Article of War (sec. 1342, Rev. Stat. of the U. S.), which is as follows:

"Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in Art. 78."

Article 78 is as follows:

"Officers of the Marine Corps, detached for service with the Army by order of the President, may be associated with officers of the Regular Army on courts-martial for the trial of an offender belong to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps, who may be present, and duly authorized, shall be obeyed."

3 Your petitioner further avers that article 78 has no application to the Volunteer Army or forces of the United States, and only relates to the association of officers of the Regular Army and marines serving on courts-martial.

Your petitioner further says that he was tried and convicted without due process of law and in violation of the 5th amendment to the Constitution of the United States.

Your petitioner further avers that under the law said court-martial is an illegal one, and without warrant of law, and that the sentence imposed by them upon said Deming is without warrant or authority at law, illegal and void, and that the detention of said Deming by said McClaughry under said pretended sentence and order is without warrant of law, illegal and void.

Wherefore, your petitioner prays that a writ of habeas corpus issue out of this court, directed to said Robert W. McClaughry, warden as aforesaid, commanding him to have the body of said Deming before this honorable court, as shall be directed in said writ, to do and receive what shall be considered by the court meet and proper, and that he may be restored to his liberty.

JNO. H. ATWOOD,
Petitioner.

UNITED STATES OF AMERICA,
District of Kansas, ss.

I, John H. Atwood, being duly sworn, upon oath depose and say that I am the petitioner in the foregoing application subscribed by me; that I have read the same and know the contents thereof; and that the same are of my own knowledge, except as to those statements alleged to be on information and belief, and as to those matters I believe them to be true.

J. H. ATWOOD.

Subscribed and sworn to before me this 28th day of August, 1901.

[SEAL.] DAVID W. FLYNN, *Notary Public.*

My commission expires August 31st, 1904.

4 (Endorsed:) No. 7951. Peter C. Deming, etc., plaintiff, vs. R. W. McClaughry, defendant. Petition for habeas corpus. Filed Sep. 11th, 1901. Geo. F. Sharitt, clerk.

5 In the circuit court of the United States for the district of Kansas, first division.

In the matter of Peter C. Deming on the petition of John H. Atwood for a writ of habeas corpus.

The President of the United States of America, to Robert W. McClaughry, Warden of the United States Penitentiary at Fort Leavenworth, Kansas.

We command you that the body of Peter C. Deming, in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before the Honorable William C. Hook, one of the judges of the circuit court of the United States for the district of Kansas, first division, at his office in the city of Leavenworth, Kansas, on Wednesday, February 26, 1902, at 2 o'clock p. m. of that day, to do and receive all and singular those things which the said William C. Hook, judge as aforesaid, shall then and there consider of him in this behalf, and have you then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22nd day of February, A. D. 1902.

[SEAL.] GEO. F. SHARITT, *Clerk.*

(Endorsed:) No. 7951, Writ habeas corpus. I hereby accept service of within writ at the United States penitentiary, Fort Leavenworth, Kansas, at 9.30 a. m. this 24th day of February, A. D. 1902. R. W. McClaughry, warden. Filed Feb'y 25, 1902. Geo. F. Sharitt, clerk.

6 In the United States circuit court for the district of Kansas, first division.

PETER C. DEMING, ON THE PETITION OF JOHN H. ATWOOD, petitioner,
vs.
ROBERT W. MCCLAUGHRY, WARDEN OF THE United States penitentiary at Fort Leavenworth, Kansas, respondent.

Return of Robert W. McClaughry to writ of habeas corpus.

To the honorable UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF KANSAS.

Respondent, Robert W. McClaughry, warden of the United States penitentiary at Fort Leavenworth, Kansas, in compliance with the writ of habeas corpus heretofore served upon him in the above-entitled cause for the production of Peter C. Deming, respectfully makes return thereto and states as follows:

That at all times herein mentioned, William R. Shafter was a major-general of volunteers, exercising command of the Department of California, by virtue of an assignment of the President of the United States as commander in chief of the Army.

That heretofore, to wit, on the 29th day of March, A. D. 1900, pursuant to the authority and in conformity with the provisions of article 72 of the Articles of War of the United States, said Major-General William R. Shafter, commanding the Department of California, appointed a general court-martial by special orders numbered 65 to meet at the Presidio of San Francisco at 11 o'clock a. m. on Tuesday, the 3rd day of April, 1900, or as soon thereafter as practicable, for the trial of Peter C. Deming, assistant commissary of subsistence, United States Volunteers, the detail of which said court-martial was as follows:

"Colonel Jacob B. Rawles, 3rd Artillery.
"Lieutenant-Colonel Richard I. Eskridge, 23rd Infantry.
"Major Louis H. Rucker, 6th Cavalry.
"Major Benjamin C. Lockwood, 21st Infantry.
"Captain Frank West, 6th Cavalry.
7 "Captain Carver Howland, 4th Infantry.
"Captain Sedgwick Pratt, 3rd Artillery.
"Captain Henry C. Danes, 3rd Artillery.
"Captain Charles A. Bennett, 3rd Artillery.
"Major Stephen W. Groesbeck, judge-advocate, U. S. Army, judge-advocate."

That all the members of said court-martial, so detailed as aforesaid, were members of the Regular Army.

That said court-martial was empowered to proceed with the business before it with any member or members present not less than the minimum

prescribed by law, the number detailed for said court being the greatest number that could be convened without manifest injury to the service.

That thereafter, to wit, on the 5th day of April, 1900, at eleven o'clock a. m., being the earliest hour and date practicable, owing to the illness of the judge-advocate, said court-martial convened, and all of the members thereof were present.

That on said 5th day of April, 1900, the court proceeded to the trial of Captain Peter C. Deming, assistant commissary of subsistance, U. S. Volunteers. The said Peter C. Deming, being present in court, the order convening the court was read to said Deming, and the said Deming was then and there asked if he objected to being tried by any member present named therein, to which the said Deming replied in the negative.

Whereupon the members of said court-martial and the judge-advocate were then duly sworn. At the instance and request of said Deming in writing he was granted a delay, and the court thereupon, on motion, adjourned to meet at eleven o'clock a. m. on Thursday, the 12th day of April, A. D. 1900.

That thereafter, to wit, on the 12th day of April, A. D. 1900, said court met at 11 o'clock a. m., pursuant to adjournment. There were present all of the members of said court, the judge-advocate, Peter C. Deming, the accused, and his counsel. At the request of counsel for said Peter C. Deming, the court granted ten days' extension of time before proceeding with the trial of him, the said Deming, and thereupon the court adjourned to meet at 11 o'clock a. m., Monday, April 23rd, 1900.

That thereafter, to wit, on the 23rd day of April, 1900, said
8 court met pursuant to adjournment, at eleven o'clock a. m. at the Presidio of San Francisco, California, at which meeting all of the members of said court were present, the judge-advocate and Peter C. Deming, the accused. His counsel was also present.

The accused was then arraigned upon the following charges, to wit:

Charge I: "Embezzlement of public money of the United States, in violation of the 60th article of war."

Specification 1st: "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, having on deposit to his official credit with the assistant treasurer of the United States at New York, certain public moneys of the United States, did for a purpose, not prescribed law, by his official check number 127922, dated March 13, 1900, made and drawn upon said assistant treasurer of the United States to the order of George V. Earnshaw, a clerk in the subsistence department, U. S. Army, willfully and with fraudulent intent cause it to appear that the United States was indebted to the said Earnshaw for pay for the month of February, 1900, in the sum of one hundred and fifty ($150.00) dollars, whereas said sum of money was not, nor any part thereof, due and payable from the United States to said Earnshaw, nor to any person, and in pursuance of his fraudulent intent, he, the said Captain Deming did forge the signature of said Earnshaw upon the reverse of said check, and on the 15th day of March, 1900, negotiate and transfer the same to one Samuel Hirschfelder, of San Francisco, California, for its full face value and did thereby withdraw, embezzle, and convert said money to his own use and benefit. This at San Francisco, California."

Specification 2nd: "In that he, Captain Peter C. Deming, assistant commissary, U. S. Volunteers, having certain sums of public money of the United States amounting in all to thirteen thousand ($13,000) dollars, more or less, lawfully committed to his custody, care, credit, and for disbursement and transfer in manner prescribed by law, and
9 having received a lawful order on the 7th day of March, 1900, from the Adjutant General, U. S. Army, to account for, transfer, and deliver the entire cash and credit balance of public money for which he, the said Captain Deming, was responsible as aforesaid, and having thereafter, to wit, on the 22 day of March, 1900, in pursuance of said lawful order, been called upon by Major W. H. Baldwin, commissary of subsistence, U. S. Army, with offer to assist him, said Captain Deming, to account for, transfer, and deliver said balance of public money, he, the said Captain Deming, did then and there fail to produce, pay over, or account for the sum of four thousand one hundred and seventy-nine and 48/100 ($4,179.48) dollars, and then and there embezzle and knowingly and wilfully misappropriate the same. This at San Francisco, California."

Charge II: "Conduct unbecoming an officer and a gentleman, in violation of the 61st article of war."

Specification 1st: "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, having on deposit to his official credit with the assistant treasurer of the United States at New York, certain public moneys of the United States, did in due form make his official check Number 127922, dated San Francisco, March 13, 1900, on the said assistant treasurer of the United States for one hundred and fifty dollars ($150.00), to the order of George V. Earnshaw, a clerk in the Subsistence Department, U. S. Army, for pay for the month of February, 1900, whereas, he, the said Captain Deming, well knew said sum of money was not, nor any part thereof, due and payabble from the United States to the said Earnshaw for the time stated; and in pursuance of his unlawful intent, he, the said Captain Deming, did falsely and deceitfully write the signature of the said Earnshaw on the back of said check, and by false and fraudulent statements on the 15th day of March, 1900, negotiate and transfer said check to one Samuel Hirschfelder, of San Francisco, California, and receive from said Hirschfelder the full face value of said check, in lawful money of the United States, and apply the same to his, said Captain Deming's, own use and benefit.
10 This at San Francisco, California."

Specification 2nd: "In that he, Captain Peter C. Deming, assistant commissary of subsistance, U. S. Volunteers, did fictitiously make a check upon the form prescribed for his use as a disbursing officer of the Subsistence Department, U. S. Army, in drawing against public money deposited to his credit with the assistant treasurer of the United States at New York, and did draw said check to his own order for the sum of one hundred and ten dollars ($110.00), said sum purporting to be for mileage, and did falsely and deceitfully, and with intent to defraud, sign the name of 'F. M. Coxe,' as maker of said check, thereby implying that the said false signature was the signature of Colonel F. M. Coxe, assistant paymaster-general, U. S. Army, and by endorsing his own signature on and uttering said false and fictitious check, he, the said

Captain Deming, did then and there attempt to injure and defraud one Dora Ogden. This at San Francisco, California, on or about March 17th, 1900."

Charge III: "Forgery, to the prejudice of good order and military discipline, in violation of the 62nd article of war."

Specification 1st: "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, upon a check made by him and drawn in due official form upon the assistant treasurer of the United States, at New York, which said check in printed and written words is to the tenor following:

"WAR.

"State object for which drawn: "Commissaries.

"No. 127922. San Francisco, March 13, 1900.

"Assistant treasurer of the U. S., New York, pay to the order of George V. Ernshaw, one hundred and fifty and 0/100 dollars. $150.00.

"Salary for February, 1900.

"PETER C. DEMING,

"*Commissary of Subsistence, U. S. A.*,

did, without authority, falsely, deceitfully and feloniously write and forge the signature of George V. Earnshaw, a clerk in the Subsistence Department, U. S. Army, with the intent to defraud and injure one Samuel Hirschfelder. This at San Francisco, California, on the 15th day of March, 1900."

11

Specification 2nd: "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, did make a fictitious check upon the form prescribed for his use as a disbursing officer of the Subsistence Department, U. S. Army, in drawing against public money deposited to his credit with the assistant treasurer of the United States at New York, to his own order, for the sum of one hundred and ten ($110.00) dollars, said sum purporting to be for mileage; and did falsely, deceitfully, and with intent to defraud, forge the name of 'F. M. Coxe' as maker of said check, thereby implying that the said false signature was the signature of Colonel F. M. Coxe, assistant paymaster-general, U. S. Army, said fictitious, false, and forged check being in printed and written words of the tenor following:

"WAR.

"State object for which drawn. "Commissaries.

"No. 127928. San Francisco, 3/17, 1000.

"Assistant treasurer of the U. S., New York, pay to the order of Peter C. Deming, one hundred and ten dollars.

"Mileage for Mar., $110.00.

"12-14-1900."

"F. M. COXE,

"*Commissary of Subsistence, U. S. A.*,

and by endorsing his own signature on said fictitious, false, and forged check, he, the said Captain Deming, did on or about the 19th day of March, 1900, at San Francisco, California, then and there attempt to injure and defraud one Dora Ogden.

"F. M. COXE,

"*Col. and Asst. Paymaster-General, U. S. A.*"

That thereupon Peter C. Deming, the accused, pleaded as follows to the above-named charges and specifications, to wit:

To the 1st specification, 1st charge, "guilty."
To the 2nd specification, 1st charge, "guilty."
To the 1st charge, "guilty."
To the 1st specification, 2nd charge, "guilty."
To the 2nd specification, 2nd charge, "guilty."
To the 2nd charge, "guilty."
To the 1st specification, 3rd charge, "guilty."
To the 2nd specification, 3rd charge, "guilty."
To the 3rd charge, "guilty."

Whereupon the prosecution rested, and Peter C. Deming, the accused, offered no evidence.

12 Whereupon the judge-advocate, the accused, and his counsel withdrew. The court was closed and found the accused, Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, guilty of the specifications and charges as follows:

Of the 1st specification, 1st charge, guilty.
Of the 2nd specification, 1st charge, guilty.
Of the 1st charge, guilty.
Of the 1st specification, 2nd charge, guilty.
Of the 2nd specification, 2nd charge, guilty.
Of the 2nd charge, guilty.
Of the 1st specification, 3rd charge, guilty.
Of the 3rd charge, guilty.

That thereupon said court-martial passed sentence upon said Peter C. Deming, on the charges and specifications aforesaid, which said sentence is in words and figures as follows, to wit:

"And the court does therefore sentence him, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, to be dismissed the service of the United States; to be confined in such penitentiary as the reviewing authority may direct, for the period of three (3) years; and that the crime, punishment, name, and place of abode of the accused shall be published in the newspapers in and about the city of San Francisco, California, and in the State where the accused usually resides.

"J. B. RAWLES,
"*Colonel 3rd Artillery, President.*

"S. W. GROESBECK,
"*Judge-Advocate, U. S. A.*"

The judge-advocate was then recalled, and the court, at 12.15 p. m., adjourned sine die.

That thereafter, to wit, on the 2nd day of May, A. D. 1900, the proceedings, finding, and sentence of said court-martial in the case of Peter C. Deming, assistant commissary of subsistence, United States Volunteers, were approved by William R. Shafter, major-general, United States Volunteers, commanding the Department of California, and submitted for the action of the President, pursuant to the provisions of article 106 of the Articles of War of the United States.

That thereafter, on the 8th day of June, A. D. 1900, said sen-
13 tence in the case of Peter C. Deming was confirmed by the President of the United States, and thereafter, on the 12th (?) day of

June, A. D. 1900, by direction of the Secretary of War, said Peter C. Deming ceased to be an officer of the Army, and the United States penitentiary at Fort Leavenworth, Kansas, was designated as the place for his confinement.

That the matters herein set forth by respondent may more fully appear to the court and proof of all material averments herein be made, a certified copy of the record and proceedings of said court-martial, duly authenticated under the laws of the United States, together with a copy of the order promulgating the proceedings, finding, and sentence in the case are hereto attached and made a part of respondent's return, marked Exhibits "A" and "B," respectively.

Wherefore respondent, in obedience of said writ of habeas corpus, now produces the body of said Peter C. Deming in court and states that said Deming is in his custody as warden of the United States penitentiary at Fort Leavenworth, Kansas, by virtue of a certain warrant or mittimus, as follows:

"By the direction of the Secretary of War, Peter C. Deming, assistant commissary of subsistence, United States Volunteers, ceases to be an officer of the Army from June 12th, 1900, and the United States penitentiary at Fort Leavenworth, Kansas, is designated as the place of his confinement, where he will be sent by the commanding general, department of California, under proper guard.

"By command of Lieutenant-General Miles.

"H. C. CORBIN, *Adjutant-General.*"

And having made full return, herewith prays the court to discharge said writ of habeas corpus and remand said Peter C. Deming to the custody of respondent as warden of the United States penitentiary at Fort Leavenworth, Kansas.

14 Respondent further says that the arrest, trial, and conviction of the said Peter C. Deming was had and done in all respects in conformity to and by authority of the rules prescribed by Congress for the government and regulation of the land and naval forces of the United States, which said rules were made by Congress under the power conferred by article 1, section 8, clause 14, of the Constitution of the United States, and that the detention and imprisonment of the said Peter C. Deming by this respondent is in conformity to and by authority of the warrant and mittimus issued in pursuance of said conviction and hereinbefore set forth in full.

ROBERT W. McCLAUGHRY,
Warden United States Penitentiary, Fort Leavenworth, Kansas.

15 EXHIBIT A.

UNITED STATES OF AMERICA,
WAR DEPARTMENT,
Washington, November 2, 1901.

I hereby certify that the sixteen pages hereto attached are a true copy of the record of the proceedings of a general court-martial remaining on file in the office of the Judge-Advocate-General United States Army.

GEO. B. DAVIS,
Judge-Advocate-General United States Army.

Be it known that George B. Davis, who signed the foregoing certificate, is the Judge-Advocate-General United States Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto set my hand and caused the seal of the War Department to be affixed, on this second day of November, one thousand nine hundred and one.

[SEAL.]

WM. CRARY SANGER,
Asst. Secretary of War.

16 *Record of a general court-martial.*

Proceedings of a general court-martial which convened at the presidio of San Francisco, California, pursuant to the following order:

Special Orders, No. 65. } HEADQUARTERS DEPARTMENT OF CALIFORNIA,
San Francisco, Cal., March 29, 1900.

* * * * * * *

7. A general court-martial is appointed to meet at the presidio of San Francisco, California, at 11 o'clock a. m. on Tuesday, the 3rd proximo, or as soon thereafter as practicable, for the trial of Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers.

Detail for the court:

Colonel Jacob B. Rawles, 3rd Artillery.
Lieutenant-Colonel Richard I. Eskridge, 23rd Infantry.
Major Louis H. Rucker, 6th Cavalry.
Major Benjamin C. Lockwood, 21st Infantry.
Captain Frank West, 6th Cavalry.
Captain Carver Howland, 4th Infantry.
Captain Sedgwick Pratt, 3rd Artillery.
Captain Henry C. Danes, 3rd Artillery.
Capt. Chas. A. Bennett, 3rd Artillery.
Major Stephen W. Groesbeck, judge-advocate, U. S. Army, judge-advocate.

[Seal, office of Judge-Advocate-General, official copy, War Department.]

The court is empowered to proceed with the business before it with any number of members present not less than the minimum prescribed by law, the above being the greatest number than can be convened without manifest injury to the service.

* * * * * * *

17 By command of Major-General Shafter:

J. B. BABCOCK,
Assistant Adjutant-General.

PRESIDIO OF SAN FRANCISCO, CAL.,
April 5, 1900.

The court met at 11 o'clock a. m., the earliest hour and date practicable. The following official notice to the president of the court explains the delay:

"HEADQRS. DEPT. OF CALIF., *4/2, 1900.*

"Col. RAWLES,
"*3rd Arty., Angel Island, Cal.:*

"Owing to illness of the judge-advocate, it will not be necessary for the general court-martial for the trial of Captain H. C. Deming, commissary of subsistence, to meet to-morrow, the 3rd instant. Due notification will be sent you when this officer is for duty.

"J. B. BABCOCK, *A. A. Genl.*"

Present:
Colonel Jacob B. Rawles, 3rd Artillery;
Lieutenant-Colonel Richard I. Eskridge, 23rd Infantry;
Major Louis H. Rucker, 6th Cavalry;
Major Benjamin C. Lockwood, 21st Infantry;
Captain Frank West, 6th Cavalry;
Captain Carver Howland, 4th Infantry;
Captain Sedgwick Pratt, 3rd Artillery;
Captain Henry C. Danes, 3rd Artillery;
Captain Chas. A. Bennett, 3rd Artillery;
Major Stephen W. Groesbeck, judge-advocate, U. S. Army, judge-advocate.

The court then proceeded to the trial of Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, who, having
18 been brought before the court, stated that he had not been able to procure counsel, but that he would waive presence of counsel for the time being.

The order convening the court was read to the accused, and he was asked if he objected to being tried by any member present named therein, to which he replied in the negative.

The members of the court and the judge-advocate were then duly sworn.

The accused then moved for delay, and submitted the following written statement:

"SAN FRANCISCO, CALIF., *April 3rd, 1900.*

"The undersigned asks for a delay or continuance in the proceedings of the court until he receives important communications from the East bearing on this case, and engage counsel for his defense. Although every effort was made yesterday to see an attorney recommended, it will not be possible to complete arrangements until Thursday afternoon. In the meantime it is fully expected to receive papers and information which will relieve me from the accusations alleged, and therefore respectfully requests a continuance until Thursday next, April 12th.

"Respectfully,

"PETER C. DEMING,
"*Captain and C. S., U. S. V.*"

The court, upon motion, granted the delay and then adjourned to meet at 11 o'clock a. m. Thursday, the 12th instant.

S. W. GROESBECK,
Judge-Advocate, U. S. A.

19 THE PRESIDIO OF SAN FRANCISCO, CAL.,
April 12th, 1900.

The court met at 11 o'clock a. m., pursuant to adjournment.

Present: All the members and the judge-advocate.

The accused then asked leave to introduce Crittenden Thornton, attorney at law, as his counsel, which request was granted.

The JUDGE-ADVOCATE. Are you ready to proceed with the case this morning?

COUNSEL FOR THE ACCUSED. No, sir; I am not. I am of counsel for the accused in this case, and it becomes my duty—an unpleasant one—to appeal to the further generosity and consideration of the court in asking for a reasonable postponement of this trial. The accused in this case attempted to secure the services of another attorney, who had the matter under consideration for several days and then finally announced that it was impossible for him to undertake his defense. Upon Friday for the first time I met the gentleman for whom I now appear, and received a copy of the charges and specifications from him. We have had very few opportunities to consult on account of the place of his temporary detention, and I may say that altogether he has not been in my company more than three hours and a half since last Friday morning. Inasmuch as certain negotiations or consultations have taken place tending to abbreviate the proceedings of this court, and for that purpose only, I may say without prejudice to the interests of my client that those matters tend in the direction of simplifying the issues which will be brought before the court, and for withdrawing some things from the further hearing of the court on the ground that they will not be seriously contested. Moreover, an important change has been made within the last twenty-four hours in the charges and specifications—I refer to specification 2 under Charge I, in which the amount of an alleged conversion of the public funds committed to the accused in the course of his duty has been enlarged. The sum is much larger than that which we expected to have to explain or to meet or to justify. For those reasons simply, and with the assurance on my part to the court and to the judge-advocate that the granting of a reasonable postponement will not tend to lengthen,
20 but, on the contrary, greatly abbreviate the labors of this court, I apply for a postponement of this trial for the period of ten days.

The JUDGE-ADVOCATE. May it please the court, the original charges in this case were prepared without the necessary time to secure entire accuracy, and the first copy was handed to accused with the reservation that amended specifications might probably be furnished when the exact facts to be set forth should be obtained. The increase of the sum alleged to have been misappropriated is not very large—about $200, I believe.

COUNSEL FOR THE ACCUSED. Four hundred, I think.

The JUDGE-ADVOCATE. All the other matters stated by counsel have been accurately stated, and I think he has presented facts the merits of which are sufficient for granting a continuance. The only point I have to raise is whether the length of time—ten days—be really necessary.

COUNSEL FOR THE ACCUSED. The reason I apply for that length of time is that I have personal engagements which I can not postpone. If you will permit me to make certain inspections of accounts proceeding rom official sources in Washington, upon that inspection we may or

may not determine to introduce no evidence whatever. I am advised and believe that there are many things connected with that account which are susceptible of explanation and of palliation, and some probably of refutation. Therefore the labors of this court will be simplified and abbreviated by a reasonable opportunity being given me for this inspection; otherwise I should be compelled to take up a large portion of the time of this court in analyzing the accounts from day to day in the presence of the court.

The JUDGE-ADVOCATE. I am entirely willing to leave the issue with the court as presented.

The accused, his counsel, and the judge-advocate then withdrew, and the court was closed, and on being opened the president announced that the decision of the court was that ten days' extension of time be granted before proceeding with the trial.

The court then adjourned to meet at 11 a. m. Monday, April 23rd, 1900.

S. W. GROESBECK,
Judge-Advocate, U. S. A.

21 THE PRESIDIO OF SAN FRANCISCO, CAL.,
April 23, 1900.

The court met, pursuant to adjournment, at 11 o'clock a. m.

Present: All the members of the court and the judge-advocate.

The accused and his counsel were also present.

J. A. Vaughan was duly sworn as reporter.

The accused was then arraigned upon the following charges and specifications:

Charge I. "Embezzlement of public money of the United States, in violation of the 60th article of war."

Specification 1st. "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, having on deposit to his official credit with the assistant treasurer of the United States at New York, certain public moneys of the United States, did for a purpose, not prescribed law, by his official check number 127922, dated March 13, 1900, made and drawn upon said assistant treasurer of the United States to the order of George V. Earnshaw, a clerk in the subsistence department, U. S. Army, willfully and with fraudulent intent cause it to appear that the United States was indebted to the said Earnshaw for pay for the month of February, 1900, in the sum of one hundred and fifty ($150.00) dollars, whereas said sum of money was not, nor any part thereof, due and payable from the United States to said Earnshaw, nor to any person, and in pursuance of his fraudulent intent, he, the said Captain Deming did forge the signature of said Earnshaw upon the reverse of said check, and on the 15th day of March, 1900, negotiate and transfer the same to one Samuel Hirschfelder, of San Francisco, California, for its full face value and did thereby withdraw, embezzle, and convert said money to his own use and benefit. This at San Francisco, California."

Specification 2nd. "In that he, Captain Peter C. Deming, assistant commissary, U. S. Volunteers, having certain sums of public money of the United States amounting in all to thirteen thousand ($13,000) dollars, more or less, lawfully committed to his custody, care, credit, and for

disbursement and transfer in manner prescribed by law, and having received a lawful order on the 7th day of March, 1900, from
22 the Adjutant-General U. S. Army to account for, transfer, and deliver the entire cash and credit balance of public money for which he, the said Captain Deming, was responsible as aforesaid, and having thereafter, to wit, on the 22 day of March, 1900, in pursuance of said lawful order, been called upon by Major W. H. Baldwin, commissary of subsistence, U. S. Army, with offer to assist him, said Captain Deming, to account for, transfer, and deliver said balance of public money, he, the said Captain Deming, did then and there fail to produce, pay over, or account for the sum of four thousand one hundred and seventy-nine and 48/100 ($4,179.48) dollars, and then and there embezzle and knowingly and wilfully misappropriate the same. This at San Francisco, California."

Charge II. "Conduct unbecoming an officer and a gentleman, in violation of the 61st article of war."

Specification 1st. "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, having on deposit to his official credit with the assistant treasurer of the United States at New York certain public moneys of the United States, did in due form make his official check number 127922, dated San Francisco, March 13, 1900, on the said assistant treasurer of the United States for one hundred and fifty dollars ($150.00) to the order of George V. Earnshaw, a clerk in the subsistence department, U. S. Army, for pay for the month of February, 1900, whereas he, the said Captain Deming, well knew said sum of money was not, nor any part thereof, due and payable from the United States to said Earnshaw for the time stated, and in pursuance of his unlawful intent he, the said Captain Deming, did falsely and deceitfully write the signature of the said Earnshaw on the back of said check and by false and fraudulent statements, on the 15th day of March, 1900, negotiate and transfer said check to one Samuel Hirschfelder, of San Francisco, California, and receive from said Hirschfelder the full face value of said check in lawful money of the United States and apply the same to his, said Captain Deming's, own use and benefit. This
23 at San Francisco, California."

Specification 2nd: "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, did fictitiously make a check upon the form prescribed for his use as a disbursing officer of the Subsistence Department, U. S. Army, in drawing against public money deposited to his credit with the assistant treasurer of the United States, at New York, and did draw said check to his own order for the sum of one hundred and ten dollars ($110.00), said sum purporting to be for mileage, and did falsely and deceitfully and with intent to defraud, sign the name of 'F. M. Coxe' as maker of said check, thereby implying that the said false signature was the signature of Colonel F. M. Coxe, assistant paymaster-general, U. S. Army, and by endorsing his own signature on and uttering said false and fictitious check, he, the said Captain Deming, did then and there attempt to injure and defraud one Dora Ogden. This at San Francisco, California, on or about March 17th, 1900."

Charge III: "Forgery, to the prejudice of good order and military discipline, in violation of the 62nd article of war."

Specification 1st: "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, upon a check made by him and drawn in due official form upon the assistant treasurer of the United States, at New York, which said check in printed and written words is to the tenor following:

"WAR.

"State object for which drawn. "Commissaries.

"No. 127922. San Francisco, March 13, 1900.

"Assistant treasurer of the U. S., New York, pay to the order of George V. Earnshaw one hundred and fifty and 0/100 dollars. $150.00.

"Salary for February, 1900.

"PETER C. DEMING,
"*Commissary of Subsistence, U. S. A.*

did without authority, falsely, deceitfully, and feloniously write and forge the signature of George V. Earnshaw, a clerk in the Subsistence Department, U. S. Army, with the intent to defraud and injure one
24 Samuel Hirschfelder. This at San Francisco, California, on the 15th day of March, 1900."

Specification 2nd: "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, did make a fictitious check upon the form prescribed for his use as a disbursing officer of the Subsistence Department, U. S. Army, in drawing against public money deposited to his credit with the assistant treasurer of the United States, at New York, to his own order for the sum of one hundred and ten ($110.00) dollars, said sum purporting to be for mileage; and did falsely, deceitfully, and with intent to defraud, forge the name of 'F. M. Coxe' as maker of said check, thereby implying that the said false signature was the signature of Colonel F. M. Coxe, assistant paymaster-general, U. S. Army, said fictitious, false, and forged check being in printed and written words of the tenor following:

"WAR.

"State object for which drawn. "Commissaries.

"No. 127928. San Francisco, 3/17, 1900.

"Assistant treasurer of the U. S., New York, pay to the order of Peter C. Deming one hundred and ten dollars.

"Mileage for Mar., $110.00.

"12-14-1900.

"F. M. COXE,
"*Commissary of Subsistence, U. S. A.*

and by endorsing his own signature on said fictitious, false, and forged check, he, the said Captain Deming, did on or about the 19th day of March, 1900, at San Francisco, California, then and there attempt to injure and defraud one Dora Ogden.

"F. M. COXE,
"*Col. & Asst. Paymaster-General, U. S. A.*"

To which the accused pleaded as follows:
To the 1st specification, 1st charge, "guilty;"
To the 2nd specification, 1st charge, "guilty;"
To the 1st charge, "guilty;"

To the 1st specification, 2nd charge, "guilty;"
To the 2nd specification, 2nd charge, "guilty;"
To the 2nd charge, "guilty;"
To the 1st specification, 3rd charge, "guilty;"
To the 2nd specification, 3rd charge, "guilty;"
To the 3rd charge, "guilty."

The prosecution rests.

25 The COUNSEL FOR THE ACCUSED: The defense has no evidence to offer, except that I would like if the learned judge-advocate would state to the court whether or not, in regard to the charges to defraud private parties, complete restitution has been made to those persons, within his knowledge.

The JUDGE-ADVOCATE. It is not within my knowledge that such restitution has been made.

The COUNSEL FOR THE ACCUSED. I think the learned judge-advocate could have acquired that knowledge from his witnesses who are in attendance. If that is material for the court to know, and I think it is, in mitigation of his sentence, the witnesses might be called before the court and interrogated before the court.

The JUDGE-ADVOCATE. After consulting with Mr. Hirschfelder, who is present, I am advised that restitution has been made in his case. To the best of my knowledge and belief, it has also been made in the case of Dora Ogden. With respect to the moneys due the Government of the United States, no restitution has been made. Mr. Hirschfelder is in court, and if the court deem it material, he may be put upon the stand to testify to the point so far as he has personal knowledge. The prosecution does not deem it material.

The COUNSEL FOR THE ACCUSED. Nor does the counsel for the defense deem it material, except in mitigation of the sentence of the court.

The JUDGE-ADVOCATE. The prosecution is willing to grant that.

By the COURT. It is desired to know if there was total restitution.

The COUNSEL FOR THE ACCUSED. Total to all private persons. I do not construe the charges and specification in regard to Dora Ogden, that she was in fact defrauded, but as an attempt to defraud. With the permission of the court, while we are on this subject, I will call your attention, Mr. President and gentlemen; I read the concluding words of specification 2 of charge 3: "And by endorsing his own signature on and uttering said fictitious false and forged check, he, the said Captain Deming, did then and there, on or about the 19th day of March, 1900, at San Francisco, California, attempt to injure and defraud one Dora Ogden."

I do not understand that Mrs. Ogden was in fact defrauded, but the
26 request I made of my learned friend, the judge-advocate, was merely in mitigation of any sentence that you might in your wisdom impose. Certainly there was no money ever passed between Mrs. Ogden and the accused.

The JUDGE-ADVOCATE. In reply to counsel, the prosecution holds that it is not material in this matter. The charge being forgery, the only point for the court to determine is whether the facts alleged sustain the charge of forgery under the specification and charge here mentioned.

By the COURT. But you are willing to admit for the prosecution that restitution has been made to private parties?

The JUDGE-ADVOCATE. Yes, sir.

By the COURT. We do not think it is necessary to call any witnesses, inasmuch as the prosecution admits it.

THE COUNSEL FOR THE ACCUSED. I would like to call attention to the court that according to my construction of this charge, the last one, it does not charge a forgery, but charges an attempt to commit a forgery. For example, with the permission of the court, a man may write the name of another for unlawful purposes, and he may write it for fraudulent purposes, and an attempt to commit a forgery is not a forgery committed. A forgery consists of two acts, the fraudulent imitation of the signature of another and the passing of that signature to a third person, and therefore, it will materially affect your sentence under this last charge—that is, if your sentence will be called a distributive sentence. If there is a separate sentence, I would like to call your attention to the last specification of this charge, that it does not charge an actual fraud. It is an attempt. There is as much difference between an attempt to commit a forgery and a forgery in fact as there is between an attempt to commit murder and an actual killing.

The JUDGE-ADVOCATE. I would like to answer the learned counsel upon that point. Forgery may be committed in very many ways. The main point here for the court to consider, I apprehend, is this: the accused made a certain check upon a government blank—a printed form made especially for disbursing officers of the United States. It carried thereby an unusual power of deception. The mere making of that check with the intent to utter it or injure anybody is, within the meaning of
27 the law, forgery. With regard to the matter of attempt here, you can strike the word out, or let it remain, and it is not material. It has but little to do with the matter before the court. The question here is, Is the specification sufficient to maintain the allegation of forgery as laid? The prosecution simply holds, after consulting authorities, that there is no doubt of that whatever. It is a clear case.

The COUNSEL FOR THE ACCUSED. The accused submits the case, as far as he is concerned.

The JUDGE-ADVOCATE. As the accused has submitted his case, I have no further remarks.

The judge-advocate, the accused and his counsel withdrew, and the court was closed, and finds the accused, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers:

Of the 1st specification, 1st charge, guilty.
Of the 2nd specification, 1st charge, guilty.
Of the 1st charge, guilty.
Of the 1st specification, 2nd charge, guilty.
Of the 2nd specification, 2nd charge, guilty.
Of the 2nd charge, guilty.
Of the 1st specification, 3rd charge, guilty.
Of the 3rd charge, guilty.

And the court does therefore sentence him, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, to be dismissed the service of the United States, to be confined in such penitentiary as the reviewing authority may direct for the period of three (3) years; and that the crime, punishment, name, and place of abode of the accused

shall be published in the newspapers in and about the city of San Francisco, California, and in the State where the accused usually resides.

J. B. RAWLES,
Colonel 3rd Artillery, President.

S. W. GROESBECK,
Judge-Advocate, U. S. A.

28 The judge-advocate was then recalled, and the court, at 12.15 p. m., adjourned sine die.

J. B. RAWLES,
Colonel 3rd Artillery, President.

S. W. GROESBECK,
Judge-Advocate, U. S. A.

HEADQUARTERS DEPARTMENT OF CALIFORNIA,
San Francisco, Cal., May 2nd, 1900.

The proceedings, findings, and sentence in the foregoing case of Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, are approved and respectfully submitted for the action of the President.

WM. R. SHAFTER,
Major-General, U. S. Vols., Commanding.

29 EXECUTIVE MANSION.

The sentence in the foregoing case of Captain Peter C. Deming, assistant commissary of subsistence, United States Volunteers, is confirmed and will be duly executed.

WILLIAM MCKINLEY.

June 8, 1900.

30 EXHIBIT B.

General Orders, No. 80.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, June 8, 1900.

Before a general court-martial which convened at the Presidio, San Francisco, California, pursuant to Special Orders, No. 65, Department of California, March 29, 1900, and of which Colonel Jacob B. Rawles, 3d Artillery, was president, and Major Stephen W. Groesbeck, judge-advocate, U. S. Army, was judge-advocate, was arraigned and tried—

Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers.

Charge I: "Embezzlement of public money of the United States, in violation of the 60th article of war."

Specification 1st: "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, having on deposit to his official credit with the assistant treasurer of the United States at New York certain public moneys of the United States, did, for a purpose not prescribed by law, by his official check, number 127922, dated March 13, 1900, made and drawn upon said assistant treasurer of the United States to the order of George V. Earnshaw, a clerk in the Subsistence Department, U. S. Army, wilfully and with fraudulent intent cause it to appear

that the United States was indebted to the said Earnshaw for pay for the month of February, 1900, in the sum of one hundred and fifty ($150.00) dollars, whereas said sum of money was not, nor any part thereof, due and payable from the United States to said Earnshaw, nor to any person; and in pursuance of his fraudulent intent he, the said Captain Deming, did forge the signature of said Earnshaw upon the reverse of said check, and on the 15th day of March, 1900, negotiate and transfer the same to one Samuel Hirschfelder, of San Francisco, California, for its full face value, and did thereby withdraw, embezzle, and convert said money to his own use and benefit. This at San Francisco, California."

Specification 2d: "In that he, Captain Peter C. Deming, assistant commissary, U. S. Volunteers, having certain sums of public money
31 of the United States, amounting in all to thirteen thousand ($13,000) dollars more or less, lawfully committed to his custody, care, credit, and for disbursement and transfer in manner prescribed by law, and having received a lawful order on the 7th day of March, 1900, from the Adjutant-General U. S. Army to account for, transfer, and deliver the entire cash and credit balance of public money for which he, the said Captain Deming, was responsible, as aforesaid, and having thereafter, to wit, on the 22nd day of March, 1900, in pursuance of said lawful order, been called upon by Major W. H. Baldwin, commissary of subsistence, U. S. Army, with offer to assist him, said Captain Deming, to account for, transfer, and deliver said balance of public money, he, the said Captain Deming, did then and there fail to produce, pay over, or account for the sum of four thousand one hundred and seventy-nine and $\frac{48}{100}$ ($4,179.48) dollars, and then and there embezzle and knowingly and wilfully misappropriate the same. This at San Francisco, California."

Charge II: "Conduct unbecoming an officer and a gentleman, in violation of the 61st article of war."

Specification 1st. "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, having on deposit to his official credit with the assistant treasurer of the United States at New York certain public moneys of the United States, did in due form make his official check, number 127922, dated San Francisco, March 13, 1900, on the said assistant treasurer of the United States for one hundred and fifty dollars ($150.00) to the order of George V. Earnshaw, a clerk in the Subsistence Department, U. S. Army, for pay for the month of February, 1900, whereas he, the said Captain Deming, well knew said sum of money was not, nor any part thereof, due and payable from the United States to the said Earnshaw for the time stated, and in pursuance of his unlawful intent he, the said Captain Deming, did falsely and deceitfully write the signature of the said Earnshaw on the back of said check, and by false and fraudulent statements, on the 15th day of March, 1900, negotiate and transfer said check to one Samuel Hirschfelder, of San Francisco,
32 California, and receive from said Hirschfelder the full face value of said check in lawful money of the United States, and apply the same to his, said Captain Deming's, own use and benefit. This at San Francisco, California."

Specification 2d: "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, did fictitiously make a check

upon the form prescribed for his use as a disbursing officer of the Subsistence Department, U. S. Army, in drawing against public money deposited to his credit with the assistant treasurer of the United States at New York, and did draw said check to his own order for the sum of one hundred and ten dollars ($110.00), said sum purporting to be for mileage, and did falsely and deceitfully and with intent to defraud sign the name of 'F. M. Coxe' as maker of said check, thereby implying that the said false signature was the signature of Colonel F. M. Coxe, assistant paymaster-general, U. S. Army, and by endorsing his own signature on and uttering said false and fictititous check he, the said Captain Deming, did then and there attempt to injure and defraud one Dora Ogden. This at San Francisco, California, on or about March 17, 1900."

Charge III: "Forgery, to the prejudice of good order and military discipline, in violation of the 62nd article of war.

Specification 1st: "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, upon a check made by him and drawn in due official form upon the assistant treasurer of the United States at New York, which said check in printed and written words is to the tenor following:

"WAR.

"Commissaries.

"No. 127922.

"San Francisco, March 13, 1900.

"State object for which drawn: Salary for February, 1900.

"ASSISTANT TREASURER OF THE U. S., *New York.*

"Pay to the order of George V. Earnshaw one hundred and fifty and $\frac{0}{100}$ dollars ($150.00).

"PETER C. DEMING,
"*Commissary of Subsistence, U. S. A.*

did without authority falsely, deceitfully, and feloniously write and forge the signature of George V. Earnshaw, a clerk in the Subsistence Department, U. S. Army, with the intent to defraud and injure one Samuel Hirschfelder. This at San Francisco, California, on the 15th day of March, 1900."

33 Specification 2d: "In that he, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, did make a fictitious check upon the form prescribed for his use as a disbursing officer of the Subsistence Department, U. S. Army, in drawing against public money deposited to his credit with the assistant treasurer of the United States at New York, to his own order, for the sum of one hundred and ten ($110.00) dollars, said sum purporting to be for mileage; and did falsely, deceitfully, and with intent to defraud, forge the name of "F. M. Coxe" as maker of said check, thereby implying that the said false signature was the signature of Colonel F. M. Coxe, assistant paymaster-general, U. S. Army, said fictitious, false, and forged check being in printed and written words to the tenor following:

"WAR.

"Commissaries.

"No. 127928 San Francisco, 3, 17, 1900.

"State object for which drawn: Mileage for Mar. 12–14, 1900.

"ASSISTANT TREASURER OF THE U. S., *New York.*

"Pay to the order of Peter C. Deming, one hundred and ten dollars ($110.00).

"F. M. COXE,

"*Commissary of Subsistence, U. S. A.*

and by endorsing his own signature on said fictitious, false, and forged check, he, the said Captain Deming, did, on or about the 19th day of March, 1900, at San Francisco, California, then and there attempt to injure and defraud one Dora Ogden."

To which charges and specification the accused Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, pleaded as follows:

CHARGE I.

To the 1st specification, "guilty."
To the 2d specification, "guilty."
To the charge, "guilty."

CHARGE II.

To the 1st specification, "guilty."
To the 2d specification, "guilty."
To the charge, "guilty."

CHARGE III.

To the 1st specification, "guilty."
To the 2d specification, "guilty."
34 To the charge, "guilty."

FINDING.

CHARGE I.

Of the 1st specification, "guilty."
Of the 2d specification, "guilty."
Of the charge, "guilty."

CHARGE II.

Of the 1st specification, "guilty."
Of the 2d specification, "guilty."
Of the charge, "guilty."

CHARGE III.

Of the 1st specification, "guilty."
Of the 2d specification, "guilty."
Of the charge, "guilty."

SENTENCE.

And the court does therefore sentence him, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, "to be dismissed the service of the United States, to be confined in such penitentiary as the reviewing authority may direct for the period of three (3) years, and that the crime, punishment, name, and place of abode of the accused shall be published in the newspapers in and about the city of San Francisco, California, and in the State where the accused usually resides."

The record of the proceedings of the general court-martial in the foregoing case of Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, having been submitted to the President, the following are his orders thereon:

EXECUTIVE MANSION, *June 8, 1900.*

The sentence in the foregoing case of Captain Peter C. Deming, assistant commissary of subsistence, United States Volunteers, is confirmed and will be duly executed.

WILLIAM MCKINLEY.

35 By direction of the Secretary of War, Captain Peter C. Deming, assistant commissary of subsistence, U. S. Volunteers, ceases to be an officer of the Army from June 12, 1900, and the United States penitentiary at Fort Leavenworth, Kansas, is designated as the place of his confinement, where he will be sent by the commanding general, Department of California, under proper guard.

By command of Lieutenant-General Miles:

H. C. CORBIN,
Adjutant-General.

(Endorsed:) No. 7951. Answer of respondent. Filed Feb'y 27th, 1902. Geo. F. Sharitt, clerk.

36 In the circuit court of appeals of the United States for the eighth circuit.

PETER C. DEMING, ON THE PETITION OF John H. Atwood, petitioner, appellant,
vs.
ROBERT W. MCCLAUGHRY, APPELLEE.

Demurrer.

Now comes the above-named petitioner and demurs to the return of the respondent in the above-entitled cause for the reason that the statements and averments in said return contained and contained in the exhibits attached thereto do not state facts sufficient to warrant the retention of the prisoner in custody nor the refusal of the writ of habeas corpus prayed for in the petition filed herein nor give the respondent any legal right to deprive the said Peter C. Deming of his liberty.

PETER C. DEMING,
By ATWOOD AND HOOPER,
Attorneys for Petitioner.

(Endorsed:) 7951. Deming, etc., vs. McClaughry. Demurrer to return. Filed Feb'y 27th, 1902. Geo. F. Sharitt, clerk.

37 United States courts of appeals, eighth circuit.

PETER C. DEMING, ON THE PETITION OF John H. Atwood, petitioner, appellant,
vs.
ROBERT W. MCCLAUGHRY, WARDEN OF the United States penitentiary at Fort Leavenworth, Kansas, appellee.

Appeal from the circuit court of the United States for the district of Kansas.

ORDER.

On this 27th day of February, 1902, came the parties hereto in person and by their respective counsel and thereupon this cause came on for hearing upon the writ and the return thereto and the demurrer of the petitioner filed to said return, and the court being well advised in the premises now sustains said demurrer.

Now, therefore, it is by the court considered, ordered, and adjudged that the detention of the said Peter C. Deming is unlawful and without warrant or authority of law and he is hereby discharged, and the said respondent, Robert W. McClaughry, is hereby ordered and directed to release said Deming. To which ruling and decision of the court the respondent at the time duly excepted and gave notice and made application for an appeal to the Supreme Court of the United States, which appeal is allowed.

Thereupon it is further ordered by the court that the said Peter C. Deming give a good and sufficient bond in the penal sum of two thousand dollars, conditioned as provided by law, that he will abide the result of said appeal and shall surrender himself in execution of the judgment and order of said court, and that until the giving and approval of said bond by this court or the judge thereof the said Peter C. Deming is hereby remanded to the custody of the said respondent, Robert W. McClaughry.

WILLIAM C. HOOK, *Judge.*

(Endorsed:) 7951. Order discharging petitioner, etc. Filed Feb'y 27, 1902. Geo. F. Sharitt, clerk.

38 In the circuit court of the United States for the district of Kansas, first division.

J. H. ATWOOD, PETITIONER, ON BEHALF OF Peter C. Deming,
v.
R. W. MCCLAUGHRY.

Assignment of error.

Comes now the defendant in the above-entitled cause and assigns error in the decision and judgment of the said circuit court in said cause, as follows:

I.

That said court erred in deciding the demurrer interposed by the petitioner and plaintiff to the return to the writ of habeas corpus filed by

said defendant in said cause, and in holding and deciding that the facts set forth in said return to said writ of habeas corpus did not constitute sufficient justification and grounds and authority of law to justify the said defendant, R. W. McClaughry, in detaining said petitioner, Peter C. Deming, as a prisoner in the United States penitentiary at Fort Leavenworth, Kansas, and the said court erred in holding that said defendant was entitled to his release from the custody of the said R. W. McClaughry, notwithstanding the existence of the facts stated in said return of the said R. W. McClaughry to the said writ of habeas corpus issued in this case.

Wherefore the said defendant prays that the judgment of said court be reversed, and that said defendant be restored to all rights he has lost thereby.

J. S. DEAN,
U. S. Atty. for R. W. McClaughry.

(Endorsed:) No. 7951. Assignment of errors. Filed Feb'y 27th, 1902.

39 In the circuit court of the United States for the district of Kansas.

J. H. ATWOOD, PETITIONER ON BEHALF OF Peter C. Deming, petitioner,
vs.
R. W. MCCLAUGHRY, AS WARDEN OF THE United States penitentiary at Fort Leavenworth, Kansas, defendant.

Petition for appeal.

Now comes the above-named defendant, and on his own behalf and on behalf of the United States of America says that on the 27 day of Feb'y, 1902, this court entered an order and judgment herein in favor of the said petitioner for the discharge of said petitioner and against this defendant for costs, in which proceedings, judgment, and order certain errors were committed to the prejudice of the said defendant and the United States of America, all of which will more fully appear from the assignment of errors which is filed with this petition.

Wherefore this defendant for himself, and on behalf of the United States of America, prays that an appeal and writ of error may issue in his behalf and in behalf of the United States of America to the Supreme Court of the United States for the correction of said errors so complained of, and that a transcript of the record and proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

J. S. DEAN,
U. S. Att'y for Defendant.

Appeal allowed.

WILLIAM C. HOOK, *Judge.*

(Endorsed:) No. 7951, in re Peter C. Deming. Petition for appeal and allowance thereof. Filed Feb. 27th, 1902. Geo. F. Sharitt, clerk.

40 Know all men by these presents that we, Peter C. Deming as principal and Cornelia W. Deming and George Wadsworth as

sureties, are held and firmly bound unto the United States of America in the full and just sum of two thousand dollars to be paid to the United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals and dated this 5th day of March in the year of our Lord one thousand nine hundred and two.

Whereas lately at the November term, A. D. 1901, of the circuit court of the United States for the first division of the district of Kansas, in a certain cause pending in said court, the same being a proceeding for a writ of habeas corpus to secure the discharge from imprisonment of one Peter C. Deming, in which cause John H. Atwood was petitioner on behalf of said Deming and R. W. McClaughry, the warden of the United States penitentiary at Fort Leavenworth, Kansas, was defendant, it was ordered that a writ of habeas corpus issue, and upon said defendant's return to said writ and the further hearing of said cause it was adjudged by said circuit court that said Peter C. Deming be released and discharged from custody and imprisonment; and

Whereas the said defendant, R. W. McClaughry, in his own behalf and on behalf of the United States of America, has made application for and had an appeal allowed by said circuit court to the Supreme Court of the United States, and said Deming has applied to be released pending such appeal and until the determination thereof and in that behalf tenders this bond.

Now, the condition of the above obligation is such that if the said Peter C. Deming shall abide the result of said appeal and shall surrender himself in execution of and in compliance with the judgment and order of the Supreme Court of the United States and of said circuit court or either of said courts as the case may be and at such time and place as may be ordered by said courts or either of them and
41 abide and perform any and all judgments or orders hereafter made in said cause, then the above obligation to be void; otherwise to remain in full force, virtue, and effect.

PETER C. DEMING. [SEAL.]
CORNELIA W. DEMING. [SEAL.]
GEORGE WADSWORTH. [SEAL.]

Witness to Deming:
W. W. HOOPER.

Taken and acknowledged before me on the day and year first above written.

JOHN R. HAZEL,
Judge of the United States District Court,
Western District of New York.

Sufficiency of bonds to the amount approved, March 5th, 1902.
JOHN R. HAZEL, *U. S. J.*

Attest:
[SEAL.] GEO. R. KEATING, *Clerk.*

Approved.

WILLIAM C. HOOK,
United States District Judge, Kansas.

42 UNITED STATES OF AMERICA,
Western district of New York, ss:

Cornelia W. Deming, a surety on the annexed recognizance, being duly sworn, deposes and says: That she resides at Buffalo, Erie County, New York, in the western district of New York; that she is a freeholder in the county of Erie, New York; that she is worth the sum of four thousand dollars over and above all her just debts and liabilities in property subject to execution and sale, and that her property consists of a house and lot situate in the city of Buffalo, Erie County, New York, known as 158 Sumner street; that the same is worth twenty thousand dollars over and above all incumbrances thereon.

CORNELIA W. DEMING.

Sworn and subscribed before me this 5th day of March, 1902.

JOHN R. HAZEL, *U. S. J.*

UNITED STATES OF AMERICA,
Western district of New York, ss:

George Wadsworth, a surety on the annexed recognizance, being duly sworn, deposes and says: That he resides at Buffalo, Erie County, New York, in the western district of New York; that he is a freeholder in the county of Erie, New York; that he is worth the sum of four thousand dollars over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists in part of a house and lot situate in the city of Buffalo, county of Erie, and State of New York, known as No. 30 Arlington Place, and that the same is worth eight thousand dollars over and above all incumbrances thereon.

GEORGE WADSWORTH.

Subscribed and sworn to before me this 5th day of March, 1902.

JOHN R. HAZEL, *U. S. J.*

43 (Endorsed:) No. 7951, Peter C. Deming, etc., vs. R. W. McClaughry. Bond. Filed Mar. 8th, 1902. Geo. F. Sharitt, clerk.

44 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, Geo. F. Sharitt, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy of the record and proceedings in said court in case No. 7951, wherein Peter C. Deming, on the petition of Jno. H. Atwood, is the petitioner and Robert W. McClaughry is the respondent.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this 19th day of March, A. D. 1902.

[SEAL.] GEO. F. SHARITT, *Clerk.*

(Indorsement on cover:) File No. 18463. Kansas C. C. U. S. Term No., 610. R. W. McClaughry, as warden of the United States penitentiary at Fort Leavenworth, Kansas, appellant, vs. Peter C. Deming. Filed March 26", 1902.

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